IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 19TH JANUARY 2007 / 29TH PAUSHA 1928

Crl.MC.No. 160 of 2007()

AGAINST THE ORDER DATED 14/12/2006 IN CMP 2304/2006 IN CC.52/2005 of JUDL. MAGISTRATE OF FIRST CLASS-II, SULTHANBATHERY

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PETITIONER:

K.K.MARY, W/O.K.P.RAMAN,
KOPNDELAPARAMBATH VEEDU, AROOR,
KAKATTIL, VADAKARA, KOZHIKODE DIST.

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENTS: COMPLAINANT

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1. K.MOHANAN, S/O.KUNHUKUNHU,
DIYA HOUSE, CHEERAL P.O., SULTHAN BATHERY,
WAYANAD DIST.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 19/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.NO.160 Of 2007

Dated this the 19th day of January, 2007

ORDER

The petitioner is the defacto complainant in a prosecution for the offences committed under Section 468 and 471 I.P.C. That case is pending before the learned Judicial Magistrate of the First Class-II, Sulthanbathery. The alleged forgery is committed in respect of a cheque leaf. This case was earlier pending before the learned Judicial Magistrate of the First Class-I, Sulthanbatheri. But for administrative reasons it was made over to the court before which it is now pending.

2. In respect of the allegedly forged cheque, there was a prosecution initiated under Section 138 of the N.I Act. That case was pending before the Judicial Magistrate of the First Class-I, Sulthanbatheri. It is submitted that conscious of the pendency of this case, trial in the other case, ie. the 138 prosecution proceeded. It ended in conviction. An appeal was taken and the appeal was dismissed by the appellate court. A revision petition is now pending. The revision has already been admitted as Crl.R.P.3212 of 2006. An order of suspension of sentence has also been passed.

3. The prosecution under Sections 468 and 471 I.P.C in which the petitioner is the defacto complainant is now coming up for trial before the learned Magistrate. The Prosecutor filed an

application for stay of proceedings. The learned Magistrate by the impugned order, a copy of which is produced as Annexure-5, turned down the prayer for stay and directed that the trial must proceed.

4. The petitioner claims to be aggrieved by the impugned order. She has come to this Court with this petition under Section 482 Cr.P.C. It is prayed that the proceedings in this prosecution, ie.C.C.52 of 2005 may be stayed.

5. I have no hesitation to agree with the learned counsel for the petitioner that the nature of allegations in the two prosecutions being in the nature of allegation and counter allegation must have ideally been disposed of together by the learned Magistrate. It is trite that when an allegation and counter allegation are raised in two different complaints, the same judicial mind must be applied to the facts and such judicial mind must take decision in each case uninfluenced by the evidence in the other case. The position is well settled and it is reiterated in **Sudhir v. State of Madhya Pradesh** [A.I.R. (2001) S.C 826]. There can be no doubt on that proposition at all. That principle has arisen not from any specific statutory provision, but on the principles of justice which insist and mandate that the same judicial mind must consider the materials in both cases obviously in the interests of avoiding conflicting decisions. Let the ideal remain as it is. In this case, the ideal course was not followed. The learned Magistrate though apprised of the pendency of both

cases, did not choose to insist that both cases must be tried together and disposed of simultaneously. The complainant and the accused, though the matter was brought to the notice of the learned Magistrate, did not come to this Court complaining about the course adopted by the learned Magistrate of proceeding with the prosecution under Section 138 of the N.I Act alone. The prosecution under Section 138 of the N.I Act was disposed of by the learned Magistrate holding the petitioner guilty of the offence under Section 138 of the N.I Act. In the appeal and the revision, the petitioner has raised a contention that the procedure adopted by the learned Magistrate is incorrect.

6. Be that as it may, the present prayer to stay the proceedings in the prosecution under Section 468 and 471 I.P.C does not appear to be justified in any view of the matter. The ideal course has not been followed. The parties did not at the appropriate time bring the fact to the notice of this Court. They appear to have acquiesced to the non ideal course followed by the learned Magistrate in disposing of the prosecution under Section 138 of the N.I Act alone. It is difficult now to set the clock back. Even if trial were held simultaneously in both cases, the learned Magistrate is obliged under law, not to import the information/material in one case to the other. The law is trite that the evidence will have to be considered in water

tight compartments in the 2 cases. Evidence in one case cannot be imported to the other case merely because the cases are in the nature of a case and counter case. I have already noted that the insistence that such case and counter case must be tried together is not an insistence of the statutory law. It is only an insistence of precedential declarations in the interests of justice.

7. In the present situation, I am of opinion that the only direction that can be made is to expeditiously dispose of the present prosecution so that, if necessary, the challenge if any against that can also be considered along with challenge which is now pending before this Court in revision. I am unable to invent or prescribe any different or better course at the moment. Waiting for the disposal of the pending revision is not in any way going to be helpful. The petitioner will have to blame herself for not having brought to the notice of this Court the incorrect procedure followed by the learned Magistrate of taking up the 138 prosecution before this prosecution was also taken up. In any view of the matter, I am satisfied that invoking the extra ordinary inherent jurisdiction available to this Court under Section 482 Cr.P.C, no interference with the impugned order is necessary. The learned Magistrate must proceed to dispose of the present prosecution under Section 468 & 471 I.P.C as expeditiously as possible uninfluenced, at any rate, by any of the findings recorded by the trial court or the appellate court in the

prosecution under Section 138 of the N.I Act. With the above observations, this Crl.M.C is, dismissed. Communicate the order to the learned Magistrate forthwith. I make it clear that I have not intended in any way to fetter the right of the petitioner to raise all pleas which are available to him in the revision which is already pending before this Court.

(R.BASANT, JUDGE)

rtr/-